

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-249

September 19, 1997

MAINECOM SERVICES
Petition for Finding of Public
Convenience and Necessity to
Provide Service as a Local
Exchange Telephone Utility

ORDER GRANTING AUTHORITY
TO PROVIDE LOCAL AND
INTEREXCHANGE TELEPHONE
SERVICES

WELCH, Chairman; NUGENT and HUNT, Commissioners

In this Order, the Commission grants MaineCom Services, (MaineCom) the authority to provide competitive local exchange service in the State of Maine. We also exempt MaineCom from the requirements of Chapter 210, *Uniform System of Accounts*, and from 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On June 5, 1997, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, MaineCom filed a petition with the Commission requesting authority to provide local telephone service in Maine.

MaineCom is a wholly-owned subsidiary of Central Maine Power Company (CMP). The reorganization of CMP that created MaineCom was approved by the Commission in Docket No. 95-092 on July 13, 1995 and August 1, 1995. In that proceeding, the Commission imposed conditions relating to the activities of MaineCom, including a condition that CMP shall obtain approval of all transactions between CMP and MaineCom that require Commission approval under 35-A M.R.S.A. § 707(3). Those conditions shall continue to apply to MaineCom's activities authorized in this Order.

In its June 5, 1997 application, MaineCom requested authority to provide "dark" and "lit" "private telecommunications links" to entities that wish to create or extend a private telecommunication network between one or more locations. MaineCom states that it will not be providing switched services, and is not seeking the authority to do so in this case. MaineCom does, however, seek authority to provide the proposed service throughout the State.

We have no policy reason to limit the authority to only a particular type of service configuration. If we did restrict authority in that manner and MaineCom subsequently decided to offer switched services, it would have to file a new petition.

Upon consultation with MaineCom, it does not object if the Commission grants broader authority.

The private link service proposed by MaineCom does not appear to be either exclusively "local" or "interexchange" in nature. We grant authority to MaineCom to provide telephone services, which necessarily includes both local and interexchange service, and switched as well as non-switched.

35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve in a municipality when another utility is authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting MaineCom the authority to provide telephone service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

MaineCom's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local services in Maine.

**II. NEED TO FILE TERMS AND CONDITIONS AND RATE SCHEDULES OR
SPECIAL CONTRACTS; APPROVAL OF EXISTING CONTRACTS**

To provide actual service, a utility not only must have authority to provide service but must have on file with the Commission a schedule of rates, terms and conditions for the services it will provide or, in the absence of rates, terms and conditions, special contracts filed and approved pursuant to 35-A M.R.S.A. § 703(3-A). MaineCom has not filed any rate schedules for local exchange service at this time. 35-A M.R.S.A. § 304 requires that a utility must file rate schedules and terms and conditions prior to providing a service that is generally available to all customers. Any such terms and conditions shall specify the areas in which MaineCom will actually provide originating and terminating local exchange service, and may do so by reference to incumbent local exchange carrier (ILEC) exchanges rather than by municipalities.

MaineCom has indicated it intends to provide service and equipment only pursuant to special contracts, at least at the present time. 35-A M.R.S.A. § 307(3-A) requires that the Commission approve such contracts, and the Commission does not have the authority to waive that statutory requirement. MaineCom has requested that we establish an expedited process for review and approval of its contracts with customers.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of MaineCom's services and rates in the market place will adequately test the reasonableness of the Company's rates. Accordingly, review of MaineCom's contracts will be quick and summary. Pursuant to the delegation order issued on January 30, 1997 in Docket No. 97-028, the Director of Technical Analysis may approve special contracts.

MaineCom has filed its existing special contracts for approval. They will be revised and approved by the Director of Technical Analysis in a separate order, pursuant to delegated authority.

MaineCom has established that the contracts submitted for approval and its future contracts with customers that it will submit for approval constitute confidential business information. On April 22, 1997, the Hearing Examiner in this case issued a protective order covering "pre-existing and new" contracts filed by MaineCom. MaineCom has requested that future contracts be subject to a "standing" protective order. The existing protective order covers future contracts and will continue in effect.

III. NEED TO OBTAIN INTERCONNECTION AGREEMENT(S)

To provide local exchange service (other than point-to-point, or private line, service), a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for MaineCom's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission. MaineCom has stated that it presently plans to offer only point-to-point service. Accordingly, it may not need interconnection agreements until it offers switched services.

If a competitive local exchange carrier (CLEC) makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent telephone companies are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(p)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254"

As a condition of providing local exchange service, MaineCom must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

IV. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, MaineCom must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. MaineCom shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

In its application, MaineCom requested that we grant waivers from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, and from 35-A M.R.S.A. §§ 707 and 708, which governs reorganizations and affiliated interests. We grant these requests. If MaineCom resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, MaineCom shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also change any rate schedules and terms and conditions that are in effect to reflect its new identity. The exemption from 35-A M.R.S.A. §§ 707 and 708 does not apply to Central Maine Power Company (CMP), which is an affiliated interest of MaineCom's. CMP must continue to comply with the requirements of sections 707 and 708 as the Commission actively regulates its rates.

V. REQUEST FOR WAIVER FROM CHAPTER 280

MaineCom has requested a waiver of all requirements of Chapter 280. MaineCom argues that it is not a "competitive telecommunications provider" under the meaning of Chapter 280. Since the time of its application, Chapter 280 has been amended. It has eliminated the definitions of "competitive provider" and "competitive telecommunications service," although those definitions have been replaced by other definitions defining particular kinds of carriers and service. The former definition of "competitive telecommunications service" defined services that are "substantially similar to services provided by local exchange carriers (LECs), and are provided to an end-user by an entity other than an LEC" MaineCom has apparently overlooked the fact that LECs also offer private line services. Under section 8(E), when a private line is used to "serve a special access function and provide access to the public switched network, end-users or carriers shall pay the common line charge" Thus, when a private line is used by a customer for internal purposes and is not connected to the public switched network, the common line charge will not apply.

We deny the request for a waiver of Chapter 280. To the extent that MaineCom may now or in the future provide facilities or services that are subject to the access charge requirements of Chapter 280, we have been presented with no reason why those provisions should not apply.

VI. REQUEST FOR INTERPRETATION OF APPLICABILITY OF 35-A M.R.S.A. § 1101

MaineCom has requested the Commission to interpret 35-A M.R.S.A. § 1101 as not requiring approval of its transactions with its customers. Section 1101 requires Commission approval before a utility may "sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or part of its property that is necessary or useful in the performance of its duties to the public" MaineCom states that the Commission in an earlier order stated that MaineCom will "lease" dark fiber

facilities to its customers.¹ MaineCom believes that the characterization was in error. MaineCom argues that its transactions with customers are not leases because MaineCom retains possession and control over the fiber-optic cable. MaineCom has not provided sufficient legal authority for us to make such a ruling. MaineCom, in effect, has requested an Advisory Opinion pursuant to 5 M.R.S.A. § 9001 and PUC Rules, Chapter 110, §§ 601-604.² If MaineCom desires a ruling on this matter, it may request an advisory opinion, but if it makes such a request, it should provide legal support for the proposition that a lease requires the transfer of possession and control.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of MaineCom Services to provide local exchange and interexchange telephone service to the service area of New England Telephone and Telegraph Company d/b/a NYNEX, and to unserved areas, within the State of Maine;

2. Exempt MaineCom Services from the requirements of Chapter 210 of the Commission's Rules, except that it must report certain revenue and minutes of use information, as required by Chapter 280, § 10(A), on or before April 1 of each year;

3. Exempt MaineCom Services from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that MaineCom shall notify the Commission of any reorganization as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of MaineCom Services or of any entity that owns more than 50% of MaineCom Services. MaineCom Services shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. MaineCom

¹Central Maine Power Company, Request for Approval of Facility License Agreement with MaineCom Services, Order on Reconsideration (Feb. 19, 1997).

²5 M.R.S.A. § 9001(1) states:

1. **Written request.** Upon written request of any interested person, an agency may make an advisory ruling with respect to the applicability of any statute or rule administered by that agency to him or his property or actual state of facts.

Services shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, MaineCom Services shall amend its rate schedules and terms and conditions to reflect any change in identity; and

4. Order MaineCom Services to comply with all applicable rules of the Commission, including the requirement in Chapter 280, § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers.

Dated at Augusta, Maine, this 19th day of September, 1997.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt